IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 3185 OF 2004

The Board of Trustees of the Port of Bombay having its Office at "Vijay Deep", Shoorji Vallabhdas Marg, Fort, Mumbai - 400 001 ...Petitioner

V/s.

Gunaji Bhikaji Masavkar of Mumbai, Indian Inhabitant, residing at Sonaji Nagar, Chawl No.2, Room No.2, Mumbai - Pune, Road, Mumbra, Dist.- Thane ...Respondent

Mr.Umesh Shetty with Mr.Abhishek Sawant i/b. M/s.Little & Co. for the Petitioner.

Mr.Jaiprakash Sawant for the Respondent.

CORAM : V.M. KANADE, J.

DATED : JUNE 26, 2007

P.C. :- -

1. Heard the learned Counsel for the petitioner and the learned Counsel for the respondent.

2. The petitioner takes exception to the Part I Award passed by the CGIT in Reference No.CGIT 54/97 as also Part II Award whereby CGIT has held that the findings of the Enquiry Officer are perverse and

secondly, it has held that the action of the management in dismissing the workman was not justified and legal and directing the petitioner to reinstate the respondent no.1 after giving him with full backwages with continuity in service. Brief facts are that the respondent was working with the petitioner from 29.5.75. The Assistant Shed Superintendent found that there was a theft of certain pallets and therefore, a complaint was lodged with the Yellow Gate Police Station. Investigation was made by the police and it was found that 2011 rolls were missing from a box which was a part of the consignment which had landed at the port under Item No.18 of IGM no.260 of the vessel "Boizenburg". The respondent and some others were arrested and the statement of the respondent was recorded under Section 27 of the Evidence Act. The police filed the charge-sheet against the respondent and others. Simultaneously, Departmental Enquiry also initiated against the respondent and other employees.

3. In the meantime, a Criminal Court acquitted the respondent and other accused of the charges which were

levelled against them in the criminal case. After a charge-sheet was issued by the petitioner to the respondent, he filed his written statement and the Enquiry Officer thereafter recorded evidence lead by both the parties. The Enquiry Officer submitted his report and found that the respondent and others were guilty as charged. Thereafter, a Show Cause Notice was issued to the respondent. The Dock Manager thereafter held the findings of the Enquiry Officer and dismissed the respondent from service with immediate effect. The matter was referred to the CGIT and it passed two Awards and set aside the order of dismissal and directed the petitioner to reinstate respondent no.1 with full backwages.

4. The learned Counsel for the petitioner submitted that the CGIT had not taken into consideration the evidence of the Inspector which was recorded during the course of the trial. He submitted that the Tribunal came to the conclusion that the case against the respondent was not proved and for that purpose relied on the order of acquittal passed by the Criminal Court and

had further held that since the respondent was acquitted by the Criminal Court on the same ground, the order of the Enquiry Officer was liable to be set aside. He submitted that the Apex Court in the recent judgment had laid down that even a confession which was recorded by the police during the course of investigation of a criminal offence was admissible in evidence in the departmental proceedings. He relied on the judgment of the Apex Court in the case of **Commissioner of Police, Delhi V/s. Narender Singh reported in AIR 2006 Supreme Court Page 1800.** He also relied on the judgment of the Apex Court in the case of **Ajit Kumar Nag V/s. General Manager (PJ), Indian Oil Corpn. Ltd., Haldia and others reported in (2005) SCC Page 764** wherein it has been held that the two proceedings criminal and departmental operate in different fields and have different objectives. He submitted that the CGIT was more influenced by the order of acquittal which was passed by the Criminal Court and had relied on the judgment of the learned Single Judge of this Court which had subsequently being overruled by the Division Bench of this Court. He submitted that the CGIT had erred in

relying on the judgment in the case of **Chandrakant Raoji Gaonkar Vs. Bombay Port Trust and Ors. reported in 1995 I CLR 860.** He submitted that this judgment was no longer good law since the said judgment was overruled by the Division Bench of this Court. He submitted that therefore, Part I Award and Part II Award were liable to be set aside.

5. Shri Sawant, learned Counsel appearing on behalf of the respondent, on the other hand, vehemently submitted that the CGIT after having permitted the petitioner to lead evidence and considering the said evidence had taken a view which was a plausible view, therefore, it was not necessary for this Court to substitute this view while exercising jurisdiction under Article 226 of the Constitution of India. He submitted that the CGIt had taken into consideration the evidence of all the witnesses and had come to the conclusion that it was not possible to rely on the statement of the respondent which was recorded by the police under Section 27 of the Evidence Act. He submitted that the complete opportunity was given to the petitioner to lead

evidence before the CGIT and that it was not open for the petitioner now to contend that the Tribunal had not taken into consideration evidence of the inspector who was examined by the petitioner.

6. In my view, in the present case, the CGIT has erred in coming to the conclusion that in view of the acquittal of the accused in the criminal case, the disciplinary enquiry was liable to be dropped and that since the accused was acquitted and the material which was used against the respondent in the departmental proceedings was the same material which was placed before the Criminal Court. The CGIT further erred in holding that in such circumstances, it was not open for the Disciplinary Authority to take a contrary view. It would be relevant to reproduce the exact finding of the Tribunal.

> "8. It is seen from the record workman Mr.Masavkar along with nine others were charge sheeted vide 397/P of 1987 under section 380 read with 114 of Indian Penal Code and were

acquitted by the Additional Chief Metropolitan Magistrate, 38th Court, Ballard Pier, Bombay on 23rd October 89. Their Lordships of the Bombay High Court in Chandrakant Raoji Gaonkar vs. Bombay Port Trust and Ors. 1995 I CLR 860, ruled that Hon'ble acquittal in the criminal case on the merits, if charges in criminal case and disciplinary proceedings are common, effect of acquittal in criminal case warrants the dropping of disciplinary inquiry. In Abdul Hakim Ahmad v. District Superintendent of Police 1978 CLR, Their Lordships of the Gujarat High Court held that on the basis of the same material and on the basis of re-appreciation of same evidence which was there before the criminal court, without anything more it is not open to the disciplinary authority to take contrary view and if this is permitted then it would render the judicial system nugatory."

7. In my view, the Tribunal clearly has committed an error of law which is apparent on the face of record.

The Apex Court in the case of **Commissioner of Police, Delhi (supra)** has observed in the said judgment that the confession by an accused was admissible even in departmental proceedings. In view of the said ratio laid down by the Apex Court, in my view, CGIT ought to have taken into consideration the evidence on record and thereafter could have recorded its findings after appreciating the said statement which was recorded by the police under Section 27 of the Evidence Act. The CGIT, therefore, has erred in neglecting the statement merely because it was recorded under Section 27 of the Evidence Act. It has also erred in neglecting the evidence of Inspector who had carried out the investigation in the criminal case. In my view, therefore, the Awards Part I and Part II passed by the CGIt are liable to be set aside. The Tribunal has recorded a finding that the inquiry which was held was fair and proper. It has, however, proceeded to record a finding that the finding of the Enquiry Officer was perverse. This finding which has been given in Part I Award will have to be set aside. Similarly, the Part II Award also will have to be set aside. The matter will

have to be remanded back to the CGIT so that it may decide the said reference on the basis of evidence which is already adduced by both the parties and which is on record and thereafter, record its findings after taking into consideration the ratio of the judgment in the case of **Commissioner of Police, Delhi (supra)** and **Ajit Kumar Nag (supra)** on merits and in accordance with law.

8. It is clarified that both the parties will not be permitted to lead any further evidence and that the Presiding Officer, CGIT, shall decide the said issues on the material which is already on record. It is clarified that CGIt shall also take into consideration the evidence which has been held in the inquiry before the Disciplinary Authority. Since the evidence is already on record and the parties are not permitted to lead any further evidence, the CGIT shall decide the said issues, as expeditiously as possible and in any case, within a period of four months after giving a hearing to the Counsel appearing on behalf of both the parties.

9. It is clarified that the CGIT may not be influenced by any observation made by this Court while deciding this writ petition. It is further clarified that the petitioner shall continue to pay the respondent whatever amount he has been receiving during the pendency of the petition till the disposal of the proceeding before the CGIT. It is further clarified that CGIT No.2 shall decide both Part I and Part II Awards.

10. Under the circumstances, the writ petition is partly allowed. Rule is made absolute in the above terms. There shall be no order as to costs.

(V.M. KANADE, J.)